

IN THE HIGH COURT OF GUJARAT
AT AHMEDABAD

Date of Decision: 11th July 1995

SPECIAL CIVIL APPLICATION NO. 3125 of 1995

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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Shri K.G. Vakharia, Senior Advocate, with Shri C.H. Vora,
Advocate, for the Petitioner

Kum. V.P. Shah, Advocate, for Respondents Nos. 1 and 2

Shri K.C. Shah, Asst. Government Pleader, for Respondent No.3

CORAM: A.N. DIVECHA, J.
(11th July 1995)

ORAL JUDGMENT

Can the President of a municipality invested with powers to call a special general meeting on requisition for consideration of a no confidence motion against him call a meeting after a considerable lapse of time? Can the term "to call" a meeting be equated with the term "to hold" a meeting for the purpose of consideration of the no confidence motion more particularly against the president of a municipality? These are the basic questions arising in this petition under Art. 226 of the Constitution of India.

2. The factual backdrop giving rise to this petition may be examined. The municipality involved in this case is the one at Gandhidham. The petitioner was elected as its president with effect from 13th January 1995. Our country has adopted the democratic set up even for governance of local affairs. The affairs of a municipality constituted under the Gujarat Municipalities Act, 1963 ('the Municipalities Act' for brief) are also managed by an elected body. The president and the vice president thereof are elected at the first meeting to be held after elections of municipal councillors as provided in sec. 32 thereof. The term of office of such elected president is for a period of one year. Such elected person as the president of the concerned municipality will be the leader of the majority party or most elected councillors. He has therefore to enjoy the confidence of the municipal councillors or a majority of them not only at the time of his election but has to continue to enjoy such confidence during his term as the president thereof. If at any point of time he loses confidence of the requisite majority of municipal councillors, he has to vacate his office as its president. In that regard provisions are made for bringing no confidence motion. In order to see that anybody or everybody may not

bring a motion of no confidence for its own sake, some stringent provisions have been laid down. As provided in sec. 51(2) of the Municipalities Act, such motion of no confidence has to be by means of a written request of not less than the one-third of the councillors of the concerned municipality. This statutory provision refers to the no confidence motion against the president as well as the vice-president. Since the no confidence motion in this case is against the petitioner as the president of the municipality at Gandhidham, the statutory provision pertaining to that office only will be considered. On receipt of a written request in that regard, the president of the municipality is required to call a special general meeting on a day not later than 15 days after the presentation of such request. It has further been provided that, in case the president fails to do so, the

vice-president shall call such meeting on a day not later than 30 days after the presentation of such request. The municipality at Gandhidham consists of total 42 councillors. Twenty three councillors thereof made a written request on 23rd March 1995 for calling a special general meeting for considering a motion of no confidence against the president. Further requisition from 7 more councillors in that regard was received on 31st March 1995. On that very day the petitioner issued a notice for calling a meeting for the said purpose to be held on 28th July 1995. A copy of the circular in that regard is at Annexure A to this petition. It appears that the vice-president of the Gandhidham Nagarpalika took the view that the petitioner had to hold the meeting within a period of 15 days from the date of receipt of the written request from the councillors and, since it was not held within 15 days from the date of such written request, he issued a notice on 7th April 1995 for holding a special general meeting on 15th April 1995 for consideration of the no confidence motion against the petitioner. A copy of the notice together with the agenda is at Annexure B to this petition. The special general meeting as called by the vice-president thereof was held on 15th April 1995. In that meeting Resolution No.30 was passed expressing no confidence against the petitioner. A copy of the minutes of the said meeting with respect to the said resolution is at Annexure C to this petition. The requisite majority for the purpose is the two-thirds of the total number of the then councillors of the municipality as provided in sec. 36 of the Municipalities Act. But according to the petitioner, the motion was carried by only 26 members and the requisite majority for the purpose would be 28 members. It appears that the petitioner thereupon approached the District Collector (Respondent No.3 herein) against the aforesaid resolution bearing No. 30 passed on 15th April 1995 expressing no confidence against him. That attempt of the petitioner proved to be an exercise in futility. According to respondent No.3, the motion was passed with the requisite majority, and as such he thought it fit not to interfere with the resolution in question. He conveyed his decision in that regard on 17th April 1995 to the petitioner. Its copy is at Annexure D to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning the validity of the resolution bearing No. 30 passed on 15th April 1995 at Annexure C to this petition and the order of respondent No. 3 at Annexure D to this petition.

3. According to Shri Vakharia for the petitioner, what sec. 51(2) requires the president to do is to call a special general meeting for consideration of the no confidence motion within 15 days from the receipt of a written request from the

specified number of councillors or more in that regard and not to hold the meeting within the specified time-limit. It has been urged that the requisition was received on 22nd March 1995 and the notice of the meeting was issued on 31st March 1995, that is, very much within the specified period of 15 days. In that view of the matter, runs the submission of Shri Vakharia for the petitioner, the meeting called by the vice-president by his notice at Annexure C to this petition and held on 15th April 1995 was without any authority of law; and the resolution passed thereat in terms of the minutes at Annexure C to this petition has to be ignored as of no consequence. As against this, both Kum. Shah and Shri Shah for the respondents have submitted that the law is very clear in that regard and the meeting for consideration of the no confidence motion has to be held within the specified time-limit of 15 days from the date of receipt of a requisition in that regard and, if such meeting is not held within the specified time-limit, the vice-president of the municipality was justified in issuing a notice on 7th April 1995 for holding a special general meeting for the purpose on 15th April 1995. It has been urged by both Kum. Shah and Shri Shah for the respondents that the meeting held on 15th April 1995 was validly held and the resolution bearing No. 30 passed thereat was quite legal and valid.

4. In order to appreciate the rival submissions urged before me, it would be quite proper to look at certain provisions of the Municipalities Act. The relevant provisions are Sec. 32 (1) and (2), Sec. 36 and Sec. 51 (1) to (4). They are reproduced below:

Section 32 (1) After a general election to a municipality, the Collector shall call the first general meeting of the municipality for the determination of the term of office of the president and the vice-president of the municipality and for the election of the president and vice-president. Such meeting shall be called within twenty five days from the date on which the names of the councillors of the municipality were published in the Official Gazette under section 6.

(2) The meeting called under sub-section (1) shall be presided over by the Collector or such officer as the Collector may by order in writing appoint in this behalf. The procedure of the meeting shall be as prescribed by rules made by the State Government and the Collector or such officer shall have such powers as may be prescribed by the said rules but shall not have the right to vote.

Section 36 (1) Any councillor of a municipality who intends to move a motion of no confidence against its

president or vice-president may give a notice thereof, in such form as may be prescribed by the State Government, to the municipality. If the notice is supported by not less than one third of the total number of the then councillors of the municipality, the motion may be moved.

(2) If the motion is carried by a majority of not less than two-thirds of the total number of the then councillors of the municipality, the president or, as the case may be, the vice-president shall cease to hold office after a period of three days from the date on which the motion is carried unless he has earlier resigned; and thereupon the office held by him shall be declared to be vacant.

(3) Notwithstanding anything contained in this Act or the rules made thereunder, the president, or as the case may be, the vice-president shall not preside over a meeting in which a motion of no confidence against him is discussed; but he shall have the right to speak in or otherwise take part in the proceedings of such meeting (including the right to vote).

Section 51 The following provisions shall be observed with respect to the meetings of a municipality:-

(1) There shall be held four ordinary general meetings in each year for the disposal of general business, in the months of January, April, July and October, respectively, and such other ordinary general meetings as the president may find necessary. It shall be the duty of the president to fix the dates for all ordinary general meetings.

(2) The president may, whenever he thinks fit, and shall, upon the written request of not less than one-third of the councillors in the case of a motion of no confidence against the president or vice-president and one-fourth of the councillors in any other case and on a day not later than fifteen days after the presentation of such request, call a special general meeting. If the president fails to call a special general meeting as provided in this clause the vice-president shall call such meeting on a day not later than thirty days after the presentation of such request :

Provided that where the president and the vice-president fail to call such meeting the chief officer shall make a report thereof to the Collector who shall call the meeting on a day not later than thirty days after the

presentation of such report.

(3) Seven clear days' notice of an ordinary general meeting, and three clear days' notice of a special general meeting, specifying the time and place at which such meeting is to be held and the business to be transacted thereat shall be served upon the councillors, and posted up at the municipal office or the local kacheri or some other public building in the municipal borough. The said notice shall include any motion or proposition whereof a councillor shall have given written notice, not less than ten clear days previous to the meeting of his intention to bring forward thereat, and in the case of a special general meeting any motion or proposition mentioned in any written request made for such meeting.

(4) Every meeting of a municipality shall, except for special reasons to be mentioned in the notice convening the meeting, be held in the building used as a municipal office by such municipality. (Emphasis supplied)

5. The crucial word for the purpose of interpretation is the word "call" occurring in sec. 51(2) of the

Municipalities Act. Ordinarily, the expression "to call" a meeting would connote to convene a meeting or to invite members to a meeting to be held on a particular day. This would be the dictionary meaning of the term. The latest edition of Law Lexicon also conveys the same meaning. However, whether or not the word has to be meant in that way for the purpose of sec. 51(2) of the Act is the main question.

6. It cannot be gainsaid that the term "to call" has different shades of meaning. "To call a meeting" can also mean "to hold a meeting". The context in which the expression is used would furnish the guidelines for interpretation of the said term. The use of the same word in the same statutory provision conveying different meanings in the context in which it is used is not unknown to the Legislature. The word "evidence" has been used in sec. 207-A of the Code of Criminal Procedure at three different places and conveying three different meanings as held by the Supreme Court in its binding ruling in the case of Ramnarayan Mor v. State of Maharashtra reported in AIR 1964 SC 949. Similarly, the use of the word "term" at two places in sec.7(3) of the Bengal Non-agricultural Tenancy Act, 1949 is designed to give two different meanings as held by the Supreme Court in the case of Indian Iron and Steel Co. Ltd. v. Biswanath Sonar reported in AIR 1967 SC 77. The word "regulating" found occurring in sec. 3(1) and (2) of the

Essential Commodities Act, 1955 conveys two different meanings in view of the binding ruling of the Supreme Court in the case of K. Ramanathan v. State of Tamil Nadu reported in AIR 1985 SC 660. It thus becomes clear that the Legislature often uses a word, a phrase or a term to convey different meanings in different contexts in the same statutory provision or in different statutory provisions of the same enactment.

7. This court however is concerned with the interpretation of the word "call" used in sec. 51(2) of the Municipalities Act. At this stage it would be quite worthwhile to look at sec. 32(1) and (2) of the Municipalities Act. There the word "call" has been used at two different places. After a general election to a municipality, the concerned Collector has been empowered to call the first general meeting of the municipality for the determination of the term of office of the president and the vice-president thereof and for their election. Here the word "call" would connote to convene or to summon. The latter part of that provision enjoins upon the Collector to call such meeting within 25 days from the date on which the list of elected councillors is published in the official gazette. Here the word "call" would suggest "hold" in the context in which it is used. To interpret otherwise would allow the Collector to hold the meeting beyond the period of 25 days from the date of elections to the municipality. This could not have been contemplated by the Legislature in its wisdom. The same word "call" is used by the Legislature in sec. 32(1) of the Municipalities Act conveying two different meanings. Sub-section (2) of sec. 32 also uses the word "call" as meaning "hold". It says the meeting called under sub-section (1) shall be presided over by the Collector or such officer as the Collector may by order in writing appoint in this behalf. The expression would mean that the meeting to be held under sub-section (1) shall be presided by the Collector and so on. In the context of the use of the word "call" in the relevant provisions contained in sec. 32 of the Act to convey different meanings, the statutory provisions contained in sec. 51(2) thereof will have to be examined.

8. As aforesaid, in a parliamentary democratic set up, the leader of the house has to be responsible to the House. He has to continue to enjoy its confidence throughout his tenure as its leader. The president of a municipality would obviously be a leader of the elected body of the councillors thereof. He has to enjoy their confidence throughout his tenure as the president. When a motion of no confidence is brought for consideration, it has to be considered as expeditiously as possible. In a parliamentary system of democracy, no leader who does not enjoy the confidence of the

House is allowed to continue in his office as such. In order to find out whether or not he continues to enjoy the confidence of the elected body in the wake of a no confidence motion, he is required to summon a special general meeting as expeditiously as possible. The Legislature in its wisdom could not be said to be unmindful of this. In that context, sec. 51(2) has to be interpreted. As indicated hereinabove, the no confidence motion in this case concerns the petitioner as the president of the municipality of Gandhidham. Section 51(2) of the Act requires him to call a meeting for consideration of the no confidence motion against him within 15 days from the date of receipt of a valid requisition in that regard. The requisition made by 23 councillors on 22nd March 1995 was a valid requisition. The no confidence motion was required to be considered as expeditiously as possible. This was with a view to avoiding any horse-trading activity as is popularly known in the world of politics. It cannot be left to the sweet will of the president to call a meeting at any time he likes. As aforesaid, the term of the elected president of a municipality is one year. If no time-limit for holding a meeting is fixed, the president may call a meeting for consideration of the no confidence motion against him after expiry of the term of his office. This would be contrary to the parliamentary system of democracy which our country has adopted even at the grass-root level. Examining the aforesaid statutory provision contained in sec. 51(2) of the Municipalities Act in this light, there is no escape from the conclusion that the meeting for consideration of the no confidence motion against the president of a municipality has to be held within 15 days from the date of receipt of a valid requisition in that regard.

9. I am supported in my view by the Division Bench ruling of the Patna High Court in the case of Sukhdeo Narayan and Ors. v. Municipal Commissioners of Arrah, Municipality and Ors. reported in AIR 1956 Patna 367. In practically similar set of circumstances, it has been held by the Patna High Court that the expression "to call a meeting" occurring in the concerned statutory provision has to be interpreted as "to hold a meeting". I am in respectful agreement with the principle of law enunciated by the Patna High Court in its aforesaid ruling.

10. The ruling of this court in the case of Gopaldas Bakubhai Rana v. Lunavada Nagar Panchayat and Ors. reported in 1985(2) 26(2) G.L.R. 1047, relied on by Shri Vakharia for the petitioner, is distinguishable on the ground that it was rendered in the context of the relevant provisions contained in the Gujarat Panchayats Act, 1961 ('the Panchayats Act' for brief). The provisions of the Panchayats Act and the Municipalities Act cannot be said to be *pari materia*. It is

true that in the relevant provisions contained in the Panchayats Act the Legislature used different words for conveying different meanings. When the Legislature used the expression "to call a meeting" in the Panchayats Act, it meant calling a meeting and not holding a meeting. However, Rules 17 and 18 of the Gujarat Gram and Nagar Panchayats (Procedure) Rules, 1963 ('the Rules' for brief) framed under the Panchayats Act clinch the issue in that regard. The time-limit for holding a meeting for consideration of a no confidence motion against the leader of an elected body has been specified in Rule 18 of the Rules. In that context, this court has come to the conclusion in its aforesaid ruling in the case of Gopaldas Rana (supra) that the expression "to call" would not mean "to hold" a meeting for the purpose of consideration of a no confidence motion. It may be mentioned that the provisions of sec. 44 (1) and (2) of the Panchayats Act have been practically incorporated in sec. 32(1) of the Municipalities Act. The distinction occurring in sec. 44(1) and (2) in the Panchayats Act will stand obliterated by looking at the relevant provisions contained in sec. 32(1) of the Municipalities Act as indicated hereinabove. Similarly, the provision of rule 18 of the Rules under the Panchayats Act is found missing in the Municipalities Act or any rules framed thereunder. In fact, no rules are framed under the Municipalities Act which would be comparable with the above-referred rules framed under the Panchayats Act. In that view of the matter, the aforesaid ruling of this court in the case of Gopaldas Rana (supra) is distinguishable on the ground that the provisions are not *pari materia*.

11. Shri Vakharia for the petitioner has brought to my notice the ruling of this court in the case of Patel Manubhai Khodidas v. Shri Sonara and Ors. reported in 1989(2) 30(2) G.L.R. 1215 holding that the provisions of the Panchayats Act with respect to the no confidence motion are in *pari materia* with the provisions in that regard contained in the Municipalities Act. As rightly submitted by Shri Vakharia for the petitioner, sitting as a single Judge, I am bound by the aforesaid ruling of a learned single Judge of this court. It may however be noted that what was involved in the aforesaid ruling of this court in the case of Manubhai Khodidas (supra) was the validity of the notice of requisition for summoning a special general meeting for consideration of the no confidence motion. In that case the requisite number of members had in the requisition stated "the members have lost confidence" and such requisition was challenged as invalid. In that context, this court in its aforesaid ruling in the case of Manubhai Khodidas (supra) has found the provisions of the Panchayats Act and the Municipalities Act as *pari materia*. This court had no occasion to examine the provisions in the Panchayats Act and

the Municipalities Act with respect to the no confidence motion in toto. It cannot be gainsaid that a part does not include or mean a whole. Simply because some part of a provision in both the Acts are found to be *pari materia*, it cannot be said that the entire provisions of both the Acts were found to be *pari materia* by this court in its aforesaid ruling in the case of Manubhai Khodidas (*supra*).

12. The Division Bench ruling of this court in the case of Balugiri Manigiri Goswami v. Additional Development Commission, Gujarat State and Ors. reported in 1989(2) 30(2) G.L.R. 808 is again distinguishable on the grounds on which the aforesaid ruling of the learned single Judge in the case of Gopaldas Rana (*supra*) is distinguished. The aforesaid Division Bench ruling has been rendered in the context of the relevant provisions contained in the Panchayats Act.

13. In view of my aforesaid discussion, I am of the opinion that the meeting for consideration of the no confidence motion for the purposes of sec. 51(2) of the Municipalities Act was required to be held by the president within 15 days from the date of receipt of the requisition in that regard. As provided in sec. 51(3) thereof, such meeting could have been convened by giving three days' clear notice. He ought to have therefore issued a notice for convening the meeting latest by 6th April 1995 as the valid requisition was received on 22nd March 1995. The notice in that regard could have been issued latest by 3rd April 1995. Since the meeting was not held by 6th April 1995 for consideration of the no confidence motion, in my humble opinion, the Vice-President was justified in issuing a notice on 7th April 1995 for holding the meeting for the purpose on 15th April 1995. The act of the Vice-President in that regard was perfectly legal and valid. In that view of the matter, the holding of the meeting on 15th April 1995 for consideration of the no confidence motion against the petitioner as the the president of the municipality was also quite legal and valid. The resolution passed thereat cannot be said to be tainted with any illegality or invalidity.

14. I have found no merit or substance in the submission urged before me by Shri Vakharia for the petitioner to the effect that the resolution expressing no confidence against the petitioner as the president was not carried by the requisite majority. Respondent No.3 in his decision at Annexure D to this petition has, on examination of the register of members, found that 28 members were present in the meeting held for the purpose on 15th April 1995 and the resolution was carried unanimously. Since the total number of councillors of the municipality was 42 at the relevant time, the resolution passed by 28 members would certainly

constitute its two-third majority. This court obviously does not sit in appeal over the decision of the Collector who is a fact finding authority. Besides, the decision contained at Annexure D to this petition is on the basis of scrutiny of the material on record. The finding contained therein cannot be said to be perverse in any manner. Such finding cannot be upset in this petition under Art. 226 of the Constitution of India.

15. In view of my aforesaid discussion, I find no merit or substance in this petition. It deserves to be rejected.

16. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs.

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